

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



76-1097

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA :  
Appellee, :  
-v- :  
MICHAEL SADOWSKI and :  
ROBERT DiGIOVANNI, :  
Appellants. :  
-----X

B  
PJS

JOINT APPENDIX FOR APPELLANTS  
MICHAEL SADOWSKI AND ROBERT DiGIOVANNI

Appeal from A Judgment  
of Conviction in the United  
States District Court for the  
Eastern District of New York



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PAGINATION AS IN ORIGINAL COPY

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D. C. Form No. 103.  
**CRIMINAL DOCKET**

75 CR 608 COSTANTINO, A.

75-632

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: <u>Browne</u> -
vs	for deft. <u>Grafman</u> :
MICHAEL GRAFMAN	Simon Chrein, Legal A
ROBERT DI GIOVANNI	for deft. <u>Sadowski</u> :
STANLEY LOSKOCINSKI JR and	Dominick Di Carlo
MICHAEL SADOWSKI	66 Court St., Brooklyn 875-4318 For Defendant: <u>Loskocinski</u> <u>Allan Labhley</u>
	for deft. <u>Di Giovanni</u>
	Joseph Lombardi
<u>Bank robbery and use of dangerous weapon</u>	

## Bank robbery and use of dangerous weapon

DATE	PROCEEDINGS
8-4-75	Before Bramwell; J - Indictment filed.
8-11-75	Govts Memorandum of Law filed.
8-14-75	Before Bramwell, J - case called - deft SADOWSKI not present - all other defts present with attys - defts arraigned and waive reading of the indictment and each enter a plea of not guilty - bail contd as to defts GRAFMAN & DI GIOVANNI - bail set at \$50,000 surety bond as to deft Loskocinski - 30 days for motions is granted.
8-21-75	Before MISHLER, CH J - case called - deft SADOWSKI present without counsel - court directs entry of not guilty on behalf of the deft - bail set at \$100,000.00 - adjd without date for trial and assignment of counsel before COSTANTINO, J.
8-25-75	By MISHLER, CHJ - Order filed apptg counsel for deft Sadowski.

75 CR 000

DATE	PROCEEDING	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
9/5/75	Notice of motion inspection, etc. filed ret. 9/19/75 (LOSKOCINSKI)		
9-8-75	Notice of Readiness for Trial filed		
9-15-75	Before COSTANTINO - case called - oral motion for reduction of bail - motion argued - bail reduced to \$35,000 surety bond or \$3,500 cash - motion to sever counts 1 and 2 - no opposition - motion granted - case adjd to 9-19-75 to set trial date. (SADOWSKI)		
9-17-75	Memorandum filed in support of Govts motion to consolidate indictments.		
9/19/75	Before COSTANTINO, J. - Case called - Defts and attys present - Case set down for trial on 11/17/75		
9/19/75	Before COSTANTINO, J. - Case called - Deft loskocinski's motion for inspection argued-granted and denied as indicated on the record		
10/1/75	Before COSTANTINO, J. - Case called - Deft and counsel present - Oral motion by deft GRAFMAN to extend bail limits - motion argued and granted - on condition that deft telephone A.U.S.A. each Monday-minutes ordered sealed		
11-11-75	Petition for Writ of Habeas Corpus Ad Testificandum filed (Graffman)		
11-11-75	Writ Issued		
11-17-75	Before COSTANTINO J - case called - deft Sadowski not present - all others present - Bench Warrant ordered for deft Sadowski and vacated. Adj to Nov. 20, 1975 for all purposes.		
11-20-75	Before COSTANTINO J - case called - adjd to Dec. 1, 1975 for trial.		
11-20-75	Writ retd and filed - Executed.		
12-1-75	Before COSTANTINO J - case called - deft Grafman & atty E.Kelly of Legal Aid present - deft arraigned and after being advised of his rights including the Y.C.A. withdraws plea of not guilty and enters a plea of guilty to count one - sentence adjd without date. Deft Loskocinski & atty A.Lashley present - deft arraigned and having been advised of his rights by the court including the Y.C.A. withdraws his plea of not guilty and enters a plea of guilty to count 7 - sentences adjd without date as to both defts - oral motion to sever as to deft Sadowski is granted. Trial ordered and begun as to deft Di Giovanni - Jurors selected and sworn - Trial contd to 12-2-75 at 10:00 am.		
12-2-75	Before COSTANTINO J - case called - deft Giovanni & atty J.Lombardo present - trial resumed - trial contd to Dec. 3, 1975.		
12-3-75	Before COSTANTINO J - case called - deft Giovanni & atty present. trial esumed - Jury returns at 8:30 pm and renderes a verdict of guilty as to counts 5 and 7 - jury polled and discharged - trial concluded; sentence adjd without date as to deft Giovanni.		

## CRIMINAL DOCKET

DATE	PROCEEDINGS
12-3-75	By Costantino J - Order of sustenance filed(Di Giovanni)
12-4-75	Before COSTANTINO J - case called - defts Sadowski ,Dougherty & Di Giovanni present with attys - motions to sever as to defts Sadowski & Dougherty -motions denied - case adjd to 12-15-75.
12/4/75	Stenographers Transcript dated 12/1/75 and 12/2/75 filed
12/11/75	Voucher for expert services filed
12/12/75	Stenographers Transcript dated 12/3/75 filed
12/15/75	Before COSTANTINO, J.- Case called- defts and counsel present- motion to suppress hearing begun- hearing concluded- motion granted- trial ordered and begun- jurors selected and sworn-trial contd to 12/15/75 at 10:
12-16-75	Before COSTANTINO J - case called - defts & attys present - trial resumed - defts motion to dismiss denied - Trial contd to 12-17-75.
12-17-75	Before COSTANTINO J - case called - defts & attys present - trial resumed - motions for mistrial denied - trial contd to 12-18-75 at 10:30 am.
12-18-75	Before COSTANTINO J - case called - defts & attys present - trial resumed - trial contd to Dec. 22, 1975 at 10:30 am.
12/22/75	Before COSTANTINO, J.- Case called- Defts and attys present-Trial resumed-Trial cont'd to 12/23/75
12/23/75	Voucher for expert services filed
12/23/75	Before COSTANTINO, J- Case called- deft and counsel present-trial rescheduled to 12/29/75 at 10:00 A.M.
12/29/75	Before COSTANTINO, J.- Case called- Deft's and counsels present- Trial resumed- Deft's motion for withdrawal of a Juror,etc. joined by all counsels -Motion denied-Deft's all move to strike all testimony of Wit. Karakites-Motion denied-Trial cont'd to 12/30/
12/30/75	Voucher for Expert Services filed.
12/30/75	Before COSTANTINO, J.- Case called- defts and counsels present- trial resumed-deft Sadowski's motion for mistrial- motion denied-govt rests defts motions to dismiss-motions denied-deft DiGiovanni rests-trial adjd to 12/31/75 at 10:00 A.M.
12/31/75	Before COSTANTINO, J.- Case called- defts and counsel present- trial resumed-oral motion by deft Grafman to have bail conditions extended motion granted and then revoked-all defts rest-motions to dismiss- motions denied- trial contd to 1/2/76 at 10:00 A.M.

DATE	PROCEEDINGS
1-2-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Judge charges Jury - Marshals sworn - Jury retires to deliberate - Order of sustenance signed for Lunch - Jury returns and renders a verdict of guilty as to count 2 - sentences adjd without date as to both defts (SADOWSKI & DI GIOVANNI) - Jury discharged - Trial concluded.
1-3-76	By COSTANTINO J - Two Orders of sustenance filed.
1/21/76	Stenographer's transcript of 12/16/75 filed in 75 CR 633
1/23/76	Stenographers Transcripts dated Decmeber 15,17 and 18 filed
1/26/76	Stenographers Transcript dated 12/23/75 filed
2-11-76	Before COSTANTINO J - case called - deft & atty present (Giovanni) adjd to 2-20-76 for sentence
2-20-76	Before COSTANTINO J - case called - defts & attys present - deft SADOWSKI sentenced on count 2 to imprisonment for 10 years pursuant to 18:4208(a)(2). Deft GIOVANNI sentenced on count 2 to study and report pursuant to 18:4208(b) defts motion to set aside verdict is denied. Deft LOSKOCINSKI sentenced on count 7 to imprisonment for a maximum of 4 years pursuant to 18:5010(b) . On motion of AUSA Brewster counts 5, 6 & 8 are dismissed. Deft GRAFMAN sentenced on count 7 to an indeterminate period under 18:5010(b) of the Y.C.A. On motion of Atty Asst. U.S. Brewster counts 2 - 8 are dismissed.
2-20-76	Judgment & Commitments filed for all defts - certif'ed copies to Marshal
2-25-76	Stenographers transcript filed dated 2-20-76(Loskocinski)
2/25/76	Certified copy of Judgments and Commitments retd and filed- defts delivered to MCC(DI GIOVANNI and SADOWSKI)
2/26/76	Notice of appeal without fed filed (SADOWSKI)
2/26/76	Docket entries and duplicate of notice of appeal mailed to court of appeals
3-1-76	Voucher for compensation of counsel filed(Loskocinski)
3/8/76	Copy of order received from court of appeals and filed that record be filed on or before 3/22/76
3-12-76	Before COSTANTINO J - case called - Judgment & Commitment amended to: <del>Judge in his capacity as a member of the Board of Parole</del> : Deft to surrender on 3-19-76 at 4:00 PM. Deft to surrender on his own behalf directly to the institution designated by the Bureau of Prisons.
3-12-76	Amended Judgment & Commitment filed - certified copies to Marshal.
3-15-76	Judgment & Commitment retd and filed (Loskocinski) deft in continuous Federal custody since July 26, 1975.
3-17-76	stenographers transcript filed dated 7-20-76.

## CRIMINAL DOCKET

Docket entries JA 5

DATE	PROCEEDINGS
3-17-76	<u>Amended</u> /Judgment & Commitment retd and filed (deft Grafman) Left to voluntarily surrender to FCI, Tallahassee 3-19-76
3/23/76	Certified copy of Judgment and Commitment retd and filed- deft SADOWSKI delivered to FYC at Ashland Ky
3-23-76	Record on Appeal certified and mailed to the Court of Appeals (SADOWSKI)
3-23-76	By COSTANTINO J - Order releasing bail (GRAFMAN)
3-23-76	Voucher for compensation of counsel Dominick Di Carlo filed (Sadowski) forwarded to the Court of Appeals for approval (over \$1,000)
3/25/76	Acknowledgment received from court of appeals for receipt of record
3/25/76	Certified copy of Judgment and Commitment retd and filed- deft Grafman to surrender to F.C.I. at Tallahassee on 3/19/76
4-7-76	Voucher for compensation filed (Sadowski)
4-15-76	Judgment & Commitment retd and filed - deft Loskocinski delivered to F.C.I.Tallahassee, Fla.
5/21/76	Before COSTANTINO, J.- Case called- deft and counsel present- deft sentenced for a period of 15 years on each of counts 2,5 and 7 to run concurrently pursuant to T-18, U.S.C Sec. 4208(b)(2)- counts 3,4,6 and 8 are reserved- Clerk to file notice of appeal (DI GIOVANNI)
5/21/76	Judgment and Commitment filed- certified copies to Marshal
5/21/76	Notice of appeal without fee filed(DI GIOVANNI)
5/21/76	Docket entries and duplicate of notice of appeal mailed to court of appeals
5-26-76	Judgment & commitment retd and filed - deft Di Giovanni has been in continuous Federal custody since July 26, 1975.
6-15-76	Copy of Judgment and Commitment returned and filed/Robert DiGiovanni delivered to Petersburg, Virginia.
6-17-76	Voucher for compensation of atty filed (Robert Di Giovanni)
7-6-76	BY WEINSTEIN, J. - Order dtd 7-6-76 directing the Marshal to return unopened an envelope containing photographs belonging to Mr. DiGiovanni filed. Clerk directed to make copy of order and forward it with envelope to Marshal. (c)
7-12-76	Voucher for compensation of counsel filed (J.Lombardo)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x  
UNITED STATES OF AMERICA

-against-

MICHAEL GRAFMAN,  
ROBERT DI GIOVANNI,  
STANLEY LOSKOCINSKI, JR., and  
MICHAEL SADOWSKI,

Cr. No. 75CR608  
(T.18, U.S.C., §§2113(a),  
2113(d) and §2)

Defendants.

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INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 2nd day of July 1975, within the Eastern District of New York, the defendants MICHAEL GRAFMAN, ROBERT DI GIOVANNI, and MICHAEL SADOWSKI knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 465 Kings Highway, Brooklyn, New York, approximately Fifteen Thousand Five Hundred Forty-nine Dollars and Eighty-nine Cents (\$15,549.89), in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a) and Section 2).

COUNT TWO

On or about the 2nd day of July 1975, within the Eastern District of New York, the defendants MICHAEL GRAFMAN, ROBERT DI GIOVANNI, and MICHAEL SADOWSKI knowingly and wilfully, by force, violence and intimidation, did take from the person and presence of employees of the National Bank of North America, 465 Kings Highway, Brooklyn, New York, approxi-

mately Fifteen Thousand Five Hundred Forty-nine Dollars and Eighty-nine Cents (\$15,549.89), in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in the commission of this act and offense the defendants MICHAEL GRAFMAN, ROBERT DI GIOVANNI and MICHAEL SADOWSKI did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2).

COUNT THREE

On or about the 17th day of July 1975, within the Eastern District of New York, the defendants MICHAEL GRAFMAN and ROBERT DI GIOVANNI knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of The Chase Manhattan Bank, 239 Kings Highway, Brooklyn, New York approximately Nine Thousand Five Hundred Eight Dollars (\$9,508.00), in United States currency, which money was in the care, custody, control,

management and possession of the said Chase Manhattan Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a) and Section 2).

COUNT FOUR

On or about the 17th day of July 1975, within the Eastern District of New York, the defendants MICHAEL GRAFMAN and ROBERT DI GIOVANNI knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of The Chase Manhattan Bank, 239 Kings Highway, Brooklyn, New York, approximately Nine Thousand Five Hundred and Eight Dollars (\$9,508.00), in United States currency, which money was in the care, custody, control, management and possession of the said Chase Manhattan Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendants MICHAEL GRAFMAN and ROBERT DI GIOVANNI did assault and place in jeopardy the lives of the said bank employees, as well as the lives of

other persons present by the use of a dangerous weapon.

(Title 18, United States Code, Section 2113(d) and Section 2).

COUNT FIVE

On or about the 18th day of July 1975, within the Eastern District of New York, the defendants MICHAEL GRAFMAN, ROBERT DI GIOVANNI and STANLEY LOSKOCINSKI knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Atlas Federal Savings and Loan Association, 689 5th Avenue, Brooklyn, New York approximately Five Thousand Six Hundred and Ninety-two Dollars (\$5,692.00), in United States currency, which money was in the care, custody, control, management and possession of the said Atlas Federal Savings and Loan Association, the deposits of which Association were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a) and Section 2).

COUNT SIX

On or about the 18th day of July 1975, within the Eastern District of New York, the defendants MICHAEL GRAFMAN,

ROBERT DI GIOVANNI and STANLEY LOSKOCINSKI knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Atlas Federal Savings and Loan Association, 689 5th Avenue, Brooklyn, New York approximately Five Thousand Six Hundred Ninety-two Dollars (\$5,692.00), in United States currency, which money was in the care, custody, control, management and possession of the said Atlas Federal Savings and Loan Association, the deposits of which Association were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendants MICHAEL GRAFMAN, ROBERT DI GIOVANNI and STANLEY LOSKOCINSKI did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2).

COUNT SEVEN

On or about the 24th day of July 1975, within the Eastern District of New York, the defendants MICHAEL GRAFMAN, ROBERT DI GIOVANNI and STANLEY LOSKOCINSKI knowingly and wilfully, by force, violence, and intimidation, did take

from the person and presence of employees of The Chase Manhattan Bank, 9318 3rd Avenue, Brooklyn, New York, approximately Five Thousand and One Dollars (\$5,001.00), in United States currency, which money was in the care, custody, control, management and possession of the said Chase Manhattan Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2).

COUNT EIGHT

On or about the 24th day of July 1975, within the Eastern District of New York the defendants MICHAEL GRAFMAN, ROBERT DI GIOVANNI and STANLEY LOSKOCINSKI knowingly and wilfully by force, violence, and intimidation, did take from the person and presence of employees of The Chase Manhattan Bank, 9318 3rd Avenue, Brooklyn, New York, approximately Five Thousand and One Dollars (\$5,001.00), in United States currency, which money was in the care, custody, control management and possession of the said Chase Manhattan Bank, the deposits of which bank were then and

there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendants MICHAEL GRAFMAN, ROBERT DI GIOVANNI and STANLEY LOSKOCINSKI did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2).

A TRUE BILL.

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FOREMAN

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UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

Ladies and gentlemen of the jury:

Now that you have heard the evidence and the arguments it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict

2 by applying the same rules of law, as given in the  
3 instructions of the Court.

4 You have been chosen and sworn as jurors in this  
5 case to try the issues of fact presented by the  
6 allegations of the indictment and the denial made by  
7 the "not guilty" pleas of the accused. You are to  
8 perform this duty without bias or prejudice as to any  
9 party. The law does not permit jurors to be governed  
10 by sympathy, prejudice or bias. Both the accused and  
11 the public expect that you will carefully and impartially  
12 consider all the evidence in the case, follow the law  
13 as stated by the Court and reach a just verdict,  
14 regardless of the consequences.

15 The attorneys both for the Government and the  
16 defendants, have been permitted by the Court and by the  
17 rules to make opening statements and summations to you.  
18 Under no circumstances are the statements they have  
19 made by way of opening or by way of summation to be  
20 taken as evidence. However, the Court and the law does  
21 permit you to take the arguments that they have  
22 proffered before you and weigh those arguments. And if  
23 you agree with what they have said on either side of the  
24 case you may use those arguments in your deliberations  
25 and in discussing the case with each other, and try to

convince one another as to what the final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in the case, you may disregard them. The arguments are not evidence. You need not weigh them. However, there are times when the arguments of the attorneys will give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

As I have already instructed you, the Court will be the judge of the law. You may recall that some motions were argued at side bar or that you were asked to leave the courtroom from time to time. That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the Court itself and should not have come before you. In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your mind.

I have not indicated to you in any way whatsoever what my feeling is with reference to the facts in the case, or with reference to the guilt or innocence of the defendants. This is your province and your job.

2 You should not try to weigh what you believe the  
3 Court's impression may be.

4 You must understand that the lawyers who appear  
5 before you are advocates. They are advocating the  
6 best case they can for the parties they represent and  
7 they have a right to exercise as much forcefulness as  
8 they desire in their questioning or otherwise in  
9 presenting their case.

10 During my pre-charge I told you among other  
11 things that the questions asked by the attorneys are  
12 never to be considered as evidence even though the  
13 question may contain a statement of evidence. You are  
14 reminded that only the answer to the question is  
15 evidence, if, of course, the question was answered.

16 Of course, you know by now that this case has  
17 come before you by way of indictment presented by a  
18 grand jury sitting in the Eastern District. Defendants  
19 Di Giovanni and Sadowski were named in an indictment  
20 presented on August 4, 1975. Defendant Dougherty was  
21 named in a separate indictment which was presented on  
22 August 21, 1975. I shall now read the indictments to you.  
23 Remember, an indictment is merely an accusation, merely  
24 a piece of paper. It is not evidence and is not proof  
25 of anything.

## Count One of the Di Giovanni-Sadowski

## indictment charges:

On or about the 2nd day of July 1975, within the Eastern District of New York, the defendants Michael Grafman, Robert Di Giovanni, and Michael Sadowski knowingly and willfully, by force, violence and intimidation, did take from the person and presence of employees of the National Bank of North America, 465 Kings Highway, Brooklyn, New York, approximately fifteen thousand five hundred forty-nine dollars and eighty-nine cents (\$15,549.89), in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2.)

## Count One of the Dougherty indictment charges:

On or about the 2nd day of July 1975, within the Eastern District of New York, the defendant Patrick Dougherty knowingly and willfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 465 Kings Highway, Brooklyn, New York, approximately

fifteen thousand five hundred forty-nine dollars and  
eighty-nine cents \$15,549.89) in United States currency,  
which money was in the care, custody, control, manage-  
ment and possession of the said National Bank of North  
America, the deposits of which bank were then and  
there insured by the Federal Deposit Insurance  
Corporation. (Title 18, United States Code,  
Section 2113(a) and Section 2.)

Section 2113(a) of Title 18 of the United States  
Code reads in pertinent part as follows:

Whoever, by force or violence, or by  
intimidation, takes, or attempts to take, from the  
person or presence of another, any property or money or  
any other thing of value belonging to, or in the care,  
custody, control, management, or possession of any  
bank is guilty of a crime.

In order to convict each of the defendants of  
the crime charged in Count One, the government must  
prove beyond a reasonable doubt the following three  
elements as to each defendant:

1. The act or acts of taking from the person  
or presence of another, money belonging to or in the  
care, custody, control, management or possession of a  
bank (or savings and loan association) as charged;

2           2. The act or acts of taking such money by  
3           force or violence, or by means of intimidation; and  
4           3. That such acts were done with a wrongful  
5           intent, that is, knowingly and willfully.

6           The charges in this indictment require the  
7           government to prove that each of the defendants knowingly  
8           and willfully performed acts in violation of law.  
9           The Court will therefore define the words knowingly and  
10          willfully.

11          An act is done "knowingly" if done voluntarily  
12          and intentionally, and not because of mistake or  
13          accident or other innocent reason.

14          The purpose of adding the word "knowingly" was  
15          to insure that no one would be convicted for an act done  
16          because of mistake, or accident or other innocent  
17          reason.

18          An act is done "willfully" if done voluntarily  
19          and intentionally, and with specific intent to do  
20          something the law forbids; that is to say, with bad  
21          purpose either to disobey or to disregard the law.

22          As I have said, the money taken must have been in  
23          the care, custody, control, management or possession of  
24          the bank. It has been stipulated that the bank did  
25          have possession of the money.

To take "by intimidation" means willfully to take by putting in fear of bodily harm. Such fear must arise from the willful conduct of the accused, rather than from some mere temperamental timidity of the victim; however, the fear of the victim need not be so great as to result in terror, panic, or hysteria.

A taking "by intimidation" must be established by proof of one or more acts or statements of the accused which were done or made, in such a manner, and under such circumstances, as would produce in the ordinary person fear of bodily harm.

However, actual fear need not be proved. Fear, like intent, may be inferred from statements made and acts done or omitted by the accused, and by the victim as well; and from all the surrounding circumstances shown by the evidence in the case.

Bank is defined as "any member bank of the Federal Reserve System, and any ... banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation."

It has been stipulated and agreed that the National Bank of North America is a bank within the meaning of this law.

I shall now read Count 2 of the indictments.

Count Two of Di Giovanni-Sadowski indictment charges:

On or about the 2nd day of July 1975, within the Eastern District of New York, the defendants Michael Grafman, Robert Di Giovanni and Michael Sadowski knowingly and willfully, by force, violence and intimidation, did take from the person and presence of employees of the National Bank of North America, 465 Kings Highway, Brooklyn, New York, approximately fifteen thousand five hundred forty-nine dollars and eighty-nine cents (\$15,549.89), in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in the commission of this act and offense the defendants Michael Grafman, Robert Di Giovanni and Michael Sadowski did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2.)

Count Two of the Dougherty indictment charges:

On or about the 2nd day of July 1975, within

the Eastern District of New York, the defendant Patrick Dougherty knowingly and willfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 465 Kings Highway, Brooklyn, New York approximately fifteen thousand five hundred forty-nine dollars and eighty-nine cents \$15,549.89], in United States currency, which money was in the care, custody, control, management and possession of the said National Bank of North America, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in the commission of this act and offense the defendant Patrick Dougherty did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2.)

Section 2113(d) of Title 18 of the United States Code reads in pertinent part as follows:

Whoever, in committing, or in attempting to commit, any offense defined in subsection (a) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be guilty of a crime.

In order to convict each of the defendants of the crime charged in count 2 the Government must prove beyond a reasonable doubt as to each defendant:

All three of the elements included in Count 1, plus one additional element, that is, that the defendants assaulted or placed in jeopardy the lives of any person by use of a dangerous weapon or device.

The crime charged in count 2 of the indictments requires that the government prove beyond a reasonable doubt four essential elements:

1. The act or acts of taking, from the person and presence of another, money belonging to or in the care, custody, control, management or possession of a bank, as charged;

2. The act or acts of taking such money by force or violence, or by means of intimidation;

3. The act or acts of assaulting and of putting in jeopardy the life of any person by the use of a dangerous weapon or device, while engaged in stealing such money from the bank, as charged, and

4. Doing such act or acts knowingly and willfully.

Any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent

present ability to do so, or any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm, constitutes an assault. An assault may be committed without actually touching, or striking, or doing bodily harm to the person of another.

So, a person who has the apparent present ability to inflict bodily harm or injury upon another person, and willfully attempts or even threatens to inflict such bodily harm, as by intentionally flourishing or pointing a pistol or gun at another person, may be found to have assaulted such person.

To "put in jeopardy the life" of a person "by the use of a dangerous weapon" means to expose such person to a risk of death, by the use of a dangerous weapon.

A "dangerous weapon" includes anything capable of being readily operated, manipulated, wielded, or otherwise used by one or more persons to inflict severe bodily harm or injury upon another person. So, an operable firearm, such as a pistol, revolver, or other "gun," capable of firing a bullet or other "ammunition," may be found to be a dangerous weapon or device.

Each of the counts also charges each of the defendants with being an aider and abettor in violation of Title 18 United States Code, Section 2. This section provides as follows:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seeks by some act or omission of his to make the criminal venture succeed.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You of course may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendants participated in its commission.

As to each defendant, you should consider count 2 of the indictment before you consider count 1. As to each defendant, if you find that the Government has succeeded in proving every essential element of count 2 beyond a reasonable doubt, you stop there. Then you need not consider count 1.

If, however, you find that as to each defendant the Government has failed to prove every essential element of count 2 beyond a reasonable doubt, you must then consider whether or not the Government has proved each of the essential elements of count 1 beyond a reasonable doubt.

There are two types of evidence from which you may find the truth as to the facts of a case -- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no

distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

A defendant is presumed innocent of the crime. Thus, the defendants although accused, begin the trial with a clean slate and with no evidence against them, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing

2 to rely and act upon it unhesitatingly in the most  
3 important of your own affairs.

4 You, the jury, will remember that a defendant is  
5 never to be convicted on mere suspicion or conjecture.  
6 The burden is always upon the prosecution to prove  
7 guilt beyond a reasonable doubt. This burden never  
8 shifts to a defendant. The law never imposes upon a  
9 defendant in a criminal case the burden or duty of  
10 calling any witnesses or producing any evidence. If the  
11 jury views the evidence in the case as reasonably  
12 permitting either of two conclusions, one of innocence,  
13 the other of guilt, you, the jury, must of course  
14 adopt the conclusion of innocence.

15 A reasonable doubt may arise not only from the  
16 evidence produced, but also from a lack of evidence.  
17 Since the burden is upon the prosecution to prove the  
18 accused guilty beyond a reasonable doubt of every  
19 essential element of the crime charged, a defendant  
20 has the right to rely upon a failure of the prosecution  
21 to establish such proof.

22 I have said that the defendants may be proven  
23 guilty either by direct or circumstantial evidence. I  
24 have said that direct evidence is the testimony of one  
25 who asserts actual knowledge of a fact, such as an

1 eyewitness. Also circumstantial evidence is proof of  
2 a chain of facts and circumstances indicating the guilt  
3 or innocence of a defendant. You, the jury, may  
4 draw common sense inferences from the proven facts.

5 It is not necessary that all inferences drawn  
6 from the facts in evidence be consistent only with  
7 guilt and inconsistent with every reasonable hypothesis  
8 of innocence. The test is one of reasonable doubt,  
9 and should be based upon all the evidence, the testimony  
10 of the witnesses, the documents offered into evidence  
11 and the reasonable inferences which can be drawn from  
12 the proven facts.

13 An inference is a deduction or conclusion which  
14 reason and common sense lead the jury to draw from the  
15 facts which have been proved. You are to consider only  
16 the evidence in the case. But in your consideration of  
17 the evidence you are not limited to the bald statements  
18 of the witnesses. On the contrary, you are permitted to  
19 draw, from the facts which you find have been proved,  
20 such reasonable inferences as seem justified in the  
21 light of your own experience.

22 You have heard some testimony relating to crimes  
23 and acts which were not charged in the indictments.  
24 Such evidence may be considered by you only for certain  
25

1                   purposes. First, you may weigh such evidence in  
2                   determining the credibility of witnesses. Second, you  
3                   may consider such evidence in evaluating the  
4                   defendants' identities, motives, intent, knowledge,  
5                   preparations or plans in carrying out the acts charged  
6                   in the indictments. However, you may not consider  
7                   evidence of other crimes as proof of the bad character  
8                   of the defendant. The law does not permit you to  
9                   conclude that someone is guilty of a crime solely  
10                  because he may have committed other acts at another time.

11                  You as jurors are the sole judges of the  
12                  credibility of the witnesses and the weight their  
13                  testimony deserves, and it goes without saying that you  
14                  should scrutinize all the testimony given, the circum-  
15                  stances under which each witness has testified, and  
16                  every matter in evidence which tends to show whether  
17                  a witness is worthy of belief. Consider each witness'  
18                  intelligence, motive and state of mind, and his demeanor  
19                  and manner while on the stand. Consider the witness'  
20                  ability to observe the matters as to which he has  
21                  testified, and whether he impresses you as having an  
22                  accurate recollection of these matters. Consider also  
23                  any relation each witness may bear to either side of the  
24                  case; the manner in which each witness might be affected  
25                  by the verdict; and the extent to which, if at all,

each witness' is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves-

Every witness' testimony must be weighed as to its truthfulness. If you find any witness lied as to any material fact in the case then the law gives you certain privileges. One of these privileges is that you have the right to disregard the entire testimony of that witness. If you find, however, that you can sift through that testimony and determine which of the testimony is true and which was false, then

1  
2 the law allows you to take the portions which were  
3 true and weigh it and disregard those portions which  
4 were false. That again is within your prerogative.

5 The weight of the evidence is not necessarily  
6 determined by the number of witnesses testifying on  
7 either side. You should consider all the facts and  
8 circumstances in evidence to determine which of the  
9 witnesses are worthy of greater credence.

10 You are not obliged to accept testimony, even  
11 though the testimony is uncontradicted and the witness  
12 is not impeached. You may decide, because of the  
13 witness' bearing and demeanor, or because of the  
14 inherent improbability of his testimony, or for other  
15 reasons sufficient to you, that such testimony is not  
16 worthy of belief.

17 The Government is not required to prove the  
18 essential elements of the offense as defined in these  
19 instructions by any particular number of witnesses.  
20 The testimony of a single witness may be sufficient to  
21 convince you beyond a reasonable doubt of the existence  
22 of an essential element of the offense charged, if you  
23 believe beyond a reasonable doubt that the witness is  
24 telling the truth.

25 The law does not compel a defendant in a

criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn, from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

You are instructed that an accomplice in a crime is a competent witness against the perpetrators of the crime. An accomplice includes all persons connected with the offense by an unlawful act or omission either before, at the time of, or after the commission of the offense, whether such witness was present or participated in the crime or not. However, his or her testimony implicating the defendant as perpetrator of a crime is inherently suspect for such a witness may well have an important personal stake in the outcome of the trial and you should scrutinize his or her testimony with great care. An accomplice so testifying may believe that the defendant's conviction will result in expected rewards that may have been either explicitly or implicitly promised to him or her in return for his or her testimony.

The mere fact that a witness may be an accomplice

1           does not mean that he or she cannot tell the truth. It  
2         only means that you are to examine his or her testimony  
3         with great care, and, if having done so, you believe it  
4         is the truth, then you are to give it the same credence  
5         as the testimony of other witnesses.  
6

7           There is nothing peculiarly different in this  
8         way a jury should consider the evidence in a criminal  
9         case, from that in which all reasonable persons treat  
10       any question depending upon evidence presented to them.

11       You are expected to use your good sense; consider the  
12       evidence in the case for only those purposes for which  
13       it has been admitted, and give it a reasonable and fair  
14       construction, in the light of your common knowledge of  
15       the natural tendencies and inclinations of human beings.

16       If an accused be proved guilty beyond reasonable  
17       doubt say so. If not so proved guilty, say so.

18       Keep constantly in mind that it would be a  
19       violation of your sworn duty to base a verdict of Guilty  
20       upon anything other than the evidence in the case; and  
21       remember as well that the law never imposes upon a  
22       defendant in a criminal case the burden or duty of  
23       calling any witnesses or producing any evidence.

24       In making the factual determination on which your  
25       verdict will be based, you may consider only the  
exhibits which have been admitted in evidence and the

testimony of the witnesses as you have heard it in this courtroom.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Now, in this type of case there must be a unanimous verdict; that means all twelve of you must agree, and it goes without saying that it becomes incumbent upon you to listen to one another and to argue out the points among yourselves in order to determine in good conscience whether your fellow juror's argument is one commensurate with yours or whether you can with good conscience agree with him. You have no right to stubbornly and idly sit by and say, "I am not talking to anyone," "I am not going to discuss it," because people with common sense and the ability to reason must communicate their thoughts. So, anything

which appears in the record and about which one of you  
may not agree -- talk it out amongst yourselves and  
then if you can't agree as to what is in the record,  
well, you can ask the Court to have that portion of  
the testimony read back to you. You may do so by  
knocking on the door and giving a note in writing to the  
clerk who will then present it to the Court, and I will  
then bring you into the courtroom.

Mr. Foreman, you will preside over your  
deliberations, and will be the spokesman here in court.

The form of your verdict shall be, you must  
consider first count 2. If you find the defendants  
guilty as to count 2 you may announce that as your  
verdict and you need not deliberate on count 1.

If, however, you do not find one or more of the  
defendants guilty as to count 2, then go on to count 1.  
Then you announce your verdict with reference to  
count 1.

Each of the defendants, as you have been told,  
is to be separately considered in reference to the  
testimony and the proof submitted in this case.

That is the charge of the Court.

Any further requests?

MR. DI CARLO: Nothing in addition to the

1 ES:m

2 2/1

3 MR. Di CARLO: Your Honor, it is going to  
4 be replete with it. I stated that prior to trial.  
5 I must give my opening, as I gave it, to present  
6 my case in that way. I stated at the beginning  
7 of this trial and before trial -- and the United  
8 States Attorney knows it -- from the nature of his  
9 evidence which was turned over to us that there  
must be conflict, severe conflict and prejudice.  
10 This is the opening wedge of it.

11 THE COURT: The prejudice that is involved,  
12 if we were discussing something other than this  
13 particular incident of the bank robbery involved,  
14 then I would have no qualms in agreeing with you  
15 that the prejudice is so overbearing that it out-  
16 weighs the probative value.

17 MR. Di CARLO: It is the going into three  
18 other banks.

19 THE COURT: We are talking about this bank  
20 at this time.

21 MR. Di CARLO: I'm going into three other  
22 banks in order to defend my client.

23 MR. BREWSTER: I think we could have a  
24 limiting instruction to the witness.

25 MR. Di CARLO: I do not want that. My  
client would be deprived of his rights.

1                   Grafman is at stake here.

2                   THE COURT: He is not here yet.

3                   MR. Di CARLO: He will be here.

4                   THE COURT: When he gets here, I will cross  
5                   it then.

6                   MR. Di CARLO: May I be heard? The credibility  
7                   of Grafman is essential. He is a liar. Liars some-  
8                   times tell the truth. There will be testimony coming  
9                   in as to DiGiovanni and other people which will affect  
10                  my client. I can show all the facts and circumstances  
11                  surrounding his lies without being limited. This  
12                  is not something that is a surprise. This is some-  
13                  thing that I have repeated again and again on four  
14                  different occasions. Your Honor has stated that I  
15                  will be precluded from a full examination and deprive  
16                  the jury of a full inquiry --

17                  THE COURT: Let us see if I understand you:  
18                  You are saying that you are going to examine Grafman  
19                  as to the conspiracy with DiGiovanni?

20                  MR. LOMBARDO: What about DiGiovanni, your  
21                  Honor?

22                  THE COURT: I understand.

23                  MR. LOMBARDO: What about my poor client?

24                  THE COURT: Who said I am going to allow it?

25                  MR. LOMBARDO: The jury will hear it.

1                   THE COURT: No, they will not.

2                   MR. LOMBARDO: It is bad enough that we had  
3                   to stand trial as to two banks and now we will have  
4                   to stand trial as to four?

5                   THE COURT: You cannot create a prejudice to  
6                   other defendants to get your defendant out.

7                   MR. Di CARLO: You are saying that I am de-  
8                   liberately creating a prejudice. What I am seeking  
9                   to do is have a fair trial. It is the United States  
10                  attorney --

11                  THE COURT: It is a fair trial for everyone.

12                  MR. Di CARLO: It is the United States attorney  
13                  that has joined them in one indictment.

14                  THE COURT: For one bank, not for four.

15                  MR. Di CARLO: When a man gets up and testifies  
16                  before a grand jury as to four bank robberies, and  
17                  when he is lying as to four bank robberies and not  
18                  as to one, the United States attorney knew full well  
19                  this occurred.

20                  My defendant cannot be deprived of a fair  
21                  trial, because the United States attorney has sought  
22                  and persisted in the face of the evidence to join  
23                  these defendants.

24                  THE COURT: If you choose to bring your  
25                  defendant into three other bank robberies, that is

1 your decision. Your questioning of Mr. Grafman may  
2 very well do that.  
3

4 MR. Di CARLO: I will do that. I will question  
5 him. I have no fear of that.  
6

7 THE COURT: If it doesn't have anything to do  
8 with your client, you cannot do that.  
9

10 MR. Di CARLO: I have no fear of questioning  
11 Mr. Grafman --  
12

13 THE COURT: If you want to start developing  
14 with whom, then there will be a problem.  
15

16 MR. Di CARLO: There is a conversation with a  
17 witness called Sonia.  
18

19 THE COURT: Yes, she was in the last one.  
20

21 MR. LOMBARDO: She was not.  
22

23 THE COURT: She was mentioned.  
24

25 MR. LOMBARDO: She was not a witness. I  
went looking for her.  
1

2 THE COURT: In the last one it was with respect  
3 to the consent to search.  
4

5 MR. Di CARLO: Sonia will be testifying to  
6 conversations that occurred in connection with other  
7 bank robberies. She is going to testify in connection  
8 with bank robberies yet to come. I fully expect to  
9 cross-examine Sonia on every detail of her statement,  
10  
11

1                   THE COURT: Let me finish.

2                   Depending on that to show why should your man,  
3                   Mr. Sadowski, all of a sudden become part of this  
4                   team? Is that what you want to show?

5                   MR. DI CARLO: What I am going to show is  
6                   that Mr. Grafman has been consistent only in one  
7                   regard, that is the naming of DiGiovanni as his  
8                   accomplice in four bank robberies. In the other  
9                   bank robberies he shifted back and forth so many  
10                  times.

11                  DiGiovanni was a long-time friend. The other  
12                  defendants, if I am not mistaken, he knew casually.  
13                  According to a statement from the United States  
14                  attorney, the relationship started on June 30th,  
15                  and the bank robbery occurred on July 2nd. He has  
16                  been consistent there, but he has lied with reference  
17                  to the drivers of the cars. He has lied on one  
18                  occasion and id dnot bring my defendant into the  
19                  bank robbery at all.

20                  We then have Sonia coming in who is extremely  
21                  important --

22                  THE COURT: There are two things wrong with  
23                  what you wish to do:

24                  One, in order for you to bring a prejudice  
25                  upon another defendant on trial, it is necessary for

1                   that defendant to have a right of cross-examination  
2                   of the party to bring that prejudice upon him.

3                   Is Mr. Sadowski going to take the witness  
4                   stand?

5                   MR. Di CARLO: I do not think I have to reach  
6                   that determination now.

7                   THE COURT: You do not have to reach it now,  
8                   but in order for this Court to make a decision you  
9                   might have to.

10                  MR. Di CARLO: I may make out my case through  
11                  the mouth of any witness on that stand.

12                  THE COURT: Under those circumstances, I feel  
13                  I am absolutely right in preventing you from going  
14                  into that area.

15                  MR. Di CARLO: Which area?

16                  THE COURT: Showing that there was a conspiracy  
17                  by other defendants and why should your man all of a  
18                  sudden become part of it.

19                  MR. Di CARLO: I am going into a multitude of  
20                  reasons.

21                  Let us take the second claim: We have a woman  
22                  named Sonia. I assume since the 3500 material was  
23                  turned over to us, she will testify. I may want to  
24                  bring out in testing her credibility the bank robber-  
25                  ies as to DiGiovanni. If I do not mention the name

1                   "DiGiovanni" --  
2

3                   THE COURT: That is a different problem.  
4

5                   MR. Di CARLO: That is the second --  
6

7                   THE COURT: That is not what we are talking  
8                   about now.  
9

10                  MR. Di CARLO: I am saying there are so many  
11                  facets to this. I cannot tell your Honor whether I  
12                  attempt to put my defendant on the stand, nor need  
13                  I. I do not have to circumscribe my examination  
14                  facing the question now whether I wish to place him  
15                  on the stand.  
16

17                  MR. BREWSTER: Your Honor, to state the Govern-  
18                  ment's position, we do not intend to put the other  
19                  three bank robberies into evidence into our case  
20                  against the defendant Robert DiGiovanni. If this  
21                  issue comes up, it will come up on cross-examination.  
22

23                  THE COURT: That is what I am saying.  
24

25                  MR. BREWSTER: As far as cross-examination  
1                  is concerned, the Court has the discretion under  
2                  Deton and Pappadakos and the other cases, to admit  
3                  that testimony concerning other bank robberies --  
4

5                  THE COURT: I understand that too. We are  
6                  not talking about the admissions. That is not the  
7                  problem we have before us now. The problem is the  
8                  admission of prejudicial matters as to the other  
9

1 defendants, who will not have a right of confrontation  
2 as to the witness being examined -- not the witness  
3 on the stand, but a witness that should be examined  
4 as to that.

5 MR. BREWSTER: From the Government's standpoint,  
6 we have no objection to a limiting instruction to  
7 Mr. Grafman for him to state simply that he partici-  
8 pated in those robberies with other individuals, but  
9 not bringing out who they were. That would be satis-  
10 factory to the Government.

11 MR. DI CARLO: This is levity of the worst sort.  
12 The Government knows that one of their witnesses will  
13 be this Sonia, that her credibility will be at issue,  
14 that she was a participant in a bank robbery, that  
15 she was in with DiGiovanni at the time. Attacking  
16 her credibility must bring DiGiovanni into it.

17 THE COURT: That is no problem for me.

18 MR. BREWSTER: I have let a number of things  
19 that Mr. Di Carlo said go by, but it is not because  
20 I agree with him. I know of no evidence of Sonia's  
21 participation in a bank robbery. There is something  
22 in the 3500 material relating to her, but nothing  
23 as to her active participation in a bank robbery.

24 MR. DI CARLO: I believe you know of Section

1                   MR. BREWSTER: Of course.

2                   THE COURT: You know of aiding and abetting.

3                   MR. BREWSTER: Yes.

4                   MR. DI CARLO: I suggest that you read the  
5                   3500 material.

6                   MR. BREWSTER: I have no objection --

7                   MR. DI CARLO: I do not wish to go into the  
8                   case. I am just stating --

9                   MR. BREWSTER: It is not something that I  
10                  accept.

11                  MR. DI CARLO: I am stating it for the purposes  
12                  of my objection, that if I am circumscribed, Mr.  
13                  Sadowski cannot get a fair trial.

14                  MR. LOMBARDO: If this evidence is permitted to  
15                  be elicited on cross-examination of the defendant  
16                  Grafman by Mr. Di Carlo, then Mr. DiGiovanni cannot  
17                  get a fair trial. I do not intend to bring anything  
18                  out as to that nature, and it isn't something which  
19                  the Government is bringing out on its own case, and  
20                  it is not something which the defendant DiGiovanni  
21                  is opening the door to.

22                  THE COURT: That is the problem. I do not know  
23                  how that evidence can be brought in. You are not  
24                  allowed to open doors, because you are cross-examining.  
25                  You are limited to the proof as it is being submitted.

2

1 MR. LOMBARDO: Exception.

2 MR. DI CARLO: Exception, your Honor.

3 THE COURT: All right.

4 (Whereupon, the jury entered the jury box.)

5 THE COURT: All right. Now, Mr. Foreman,  
6 ladies and gentlemen of the jury:

7 I realize that you have been in that room for  
8 some time, approximately two hours in any event. And  
9 again I tell you it was not for the purpose of seeing  
10 whether or not I could irritate or agitate you in any  
11 way. But there was an extremely serious legal  
12 problem that was brought before the Court and it took  
13 a good length of time for the Court to reach its  
14 decision, so that we could proceed with this case.  
15 We are now going to proceed.

16 All right.

17 MR. LOMBARDO: Your Honor, may we have a side  
18 bar for just a moment?

19 (The following took place at the side bar.)

20 MR. LOMBARDO: I agree with you, Judge, jobs  
21 are hard to get. I will withdraw any objection to  
22 substituting the alternate for Juror No. 3.

23 MR. DI CARLO: I would join in that except on  
24 the condition that alternate No. 2 be substituted  
25 rather than Alternate No. 1. I looked at Alternate

Colloquy relative to severance JA 48

1           7           Grafman - cross - DiCarlo  
2  
3           am not in any way misleading the Jury or his Honor,  
4           this was not done because you first didn't want to im-  
5           plicate anyone. This is the way the agent set it up and  
6           he took your statement first or second, with your  
7           participation separately, and a separate statement with  
8           others?

9  
10          A         Yes, that's the way they set it up.

11  
12          MR. DI CARLO: At this time I offer  
13           Exhibits E, F, G and H in evidence.

14  
15          MR. BREWSTER: No objection.

16  
17          MR. LOMBARDO: May I see them, please.

18  
19          MR. LE MOLES: I have no objection, your  
20           Honor.

21  
22          MR. LOMBARDO: May we have a side bar,  
23           your Honor?

24  
25          (The following occurred at side bar.)

26  
27          MR. LOMBARDO: On behalf of the defendant  
28           DiGiovanni, I object to each and every one of these  
29           exhibits for identification going into evidence.

30  
31          Exhibit E refers to a bank robbery that  
32           took place on July 18 of 1975.

33  
34          In addition the defendant -- the witness,  
35           rather, has admitted his complicity in that bank  
36           robbery.

1                   8                   Grafman - cross - DiCarlo

2                   THE COURT: Right.

3                   MR. LOMBARDO: With reference to

4                   Exhibit F --

5                   THE COURT: What's the purpose of this state-  
6                   ment? Let me find out for what reason you are  
7                   offering these statements.

8                   MR. DI CARLO: As part of my basic core  
9                   of my case to show there are two masterminds in  
10                  this plot, a DiGiovanni and Mr. Grafman, who  
11                  participated in this conspiracy in the beginning.

12                  THE COURT: He already said he has.

13                  It serves no purpose.

14                  MR. DI CARLO: Who said he has?

15                  THE COURT: Grafman said.

16                  MR. DI CARLO: The relations of these  
17                  people is essential.

18                  I am allowed to attack his credibility.

19                  THE COURT: He said he was involved.

20                  MR. DI CARLO: My theory is we have two  
21                  people involved in this bank robbery who picked  
22                  and chose their accomplices.

23                  THE COURT: I will let you show the  
24                  July 2nd one.

25                  MR. DI CARLO: I think it shows all.

1                   9         Grafman - cross - DiCarlo

2                   THE COURT: I will show you the rule.

3                   I will not allow them. They serve no pur-  
4                   pose. He has already said he was involved in  
5                   four bank robberies. He testified as to one  
6                   in July 2nd, which he was involved in and what-  
7                   ever happened after that, and your man says he wasn't  
8                   there, so what?

9                   MR. DI CARLO: I think I can attack his  
10                  credibility as to his relationships with all  
11                  the parties.

12                  THE COURT: If he said he wasn't involved  
13                  in any of the bank robberies, that's different.

14                  MR. BREWSTER: I think Mr. DiCarlo can  
15                  question his power of recollection.

16                  THE COURT: But you couldn't put those  
17                  statements into evidence?

18                  MR. DI CARLO: I can question him on the  
19                  statements.

20                  THE COURT: I cannot stop you from doing  
21                  that.

22                  MR. DI CARLO: Even without the statements,  
23                  I can ask him who were the participants.

24                  THE COURT: We are only interested in the  
25                  one robbery here, the Kings Highway Bank.

10

2 THE COURT: Mr. Di Carlo, the questions you are  
3 now asking do not pertain to your client. They per-  
4 tain to someone else's. Your client is not involved.  
5 I do not know why the other attorneys have not objected.  
6 This has nothing to do with your client --

7 MR. DI CARLO: I do not want to speak in front  
8 of the jury.

9 THE COURT: You can answer me on that. This  
10 relates to a second bank robbery for which this man  
11 says your client was not a participant.

12 MR. DI CARLO: I am saying that this man has  
13 lied -- I do not want to speak in front of the jury.

14 THE COURT: That may be so, but this is  
15 completely unrelated to your client. I will prevent  
16 you from asking any further questions along this line.

17 MR. DI CARLO: May I get a percentage as to the  
18 proceeds?

19 THE COURT: What difference does it make? Your  
20 client was not involved and he has said so.

21 MR. DI CARLO: Your Honor, this man's credi-  
22 bility -- my client is affected by this man's credi-  
23 bility.

24 THE COURT: He said he was not involved --

25 MR. DI CARLO: But it is my contention that this

1 Grafman

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2 a sidebar at this point?

3 THE COURT: Surely. Maybe we will take a  
4 few minutes' recess. Take a short recess.

5 (The jury retired from the courtroom at  
6 3:25 p.m.)

7 (The following occurred in the absence of  
8 the jury.)

9 MR. BREWSTER: Your Honor, at this point I  
10 propose to ask Michael about any conversations that  
11 he had with Michael Sadowski after the robbery.

12 I anticipate the following testimony in  
13 substance: that there came a time somewhat later  
14 in July when Grafman got a telephone call from  
15 Sadowski. Sadowski gave him his phone number, a  
16 number down in Florida, and they had some discussion  
17 about how Sadowski was pretty much out of money  
18 and was interested in doing another bank robbery.

19 Now Michael Grafman would testify that he  
20 did discuss doing another robbery with Sadowski;  
21 that very shortly before he was arrested he placed  
22 a call to Sadowski at the telephone number that  
23 Sadowski gave him, reached Sadowski, talked with  
24 him about the robbery.

25 Sadowski said he would call Di Giovanni and

Grafman

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discuss it with him. They planned to do the robbery  
the following week, the week following the 25th  
of July. And that is the substance of it, your  
Honor. In other words it is a conversation that  
relates to several issues. First of all, we  
would offer the testimony to show that Grafman  
simply spoke with Sadowski after the robbery;  
that he spoke to him using the particular number  
down in Florida as evidence of the fact that he  
was in Florida.

We would also introduce the substance of  
the conversations as an admission on the part of  
Sadowski and a subsequent similar act.

I would point out that the Government's  
case as to Michael Sadowski, as your Honor knows  
from the Simmons hearing situation that we all  
witnessed, is going to be a circumstantial case,  
and under Deaton Pappadakos and the principle that  
the Second Circuit has laid down, of course the  
Court has brought discretion.

One of the important criteria in weighing  
the admission of a subsequent similar act or prior  
similar act is need. And I submit to the Court  
in a case such as this where we are relying on

1 Grafman

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2 circumstantial evidence and the testimony of an  
3 accomplice who admits having lied on a number of  
4 occasions, that there is a strong need for this  
5 kind of testimony.

6 MR. Di CARLO: It is very interesting that  
7 because Mr. Brewster had introduced the perjured  
8 witness he now wishes to show a subsequent crime,  
9 and I say to show the propensity to commit a crime,  
10 because of the weakness of this very case. He  
11 uses the excuse that he wants to show that they  
12 conversed in Florida. I have already conceded  
13 that they conversed in Florida in my opening.  
14 And certainly there is no need for that kind of  
15 testimony for that. I think it is highly irregular  
16 for Mr. Brewster to get up in this court now and  
17 say he is going to submit another act -- he charges  
18 no conspiracy with respect to a determination made  
19 of the bank robbery -- and now for the first time  
20 he wishes to come in because he says because he  
21 has a weak case he wants this witness who committed  
22 perjury to testify to additional acts and additional  
23 crimes. I think it is highly prejudicial. I  
24 object to it most strenuously.

25 MR. BREWSTER: I think I have an obligation

1 case your discretion should be exercised and stated  
2 to the prosecutor that you will not permit this kind  
3 of testimony to come in.

4 THE COURT: I will take a few minutes to make  
5 my decision.

6 (Recess taken.)

7 THE COURT: The Court is ready to make its  
8 determination and I find that the evidence in question  
9 is relevant for the purposes other than to show the  
10 defendant's criminal character or disposition.

11 Accordingly, it is admissible.

12 MR. Di CARLO: I object to your Honor's decision.

13 MR. LOMBARDO: I join in that objection.

14 MR. LeMOLES: I do, too, your Honor.

15 MR. BREWSTER: Your Honor, I'd like to inquire  
16 of Mr. Lombardo whether I should instruct my witness  
17 not to bring out portions of the conversation relating  
18 to Robert Di Giovanni?

19 MR. LOMBARDO: Yes.

20 MR. Di CARLO: Unless directed specifically by  
21 the Court, I will make those inquiries, and I note  
22 for the record that if I am prevented from doing so,  
23 that my defendant is being denied a fair trial by a  
24 prejudicial joinder by the United States Attorney.

25 THE COURT: The Court will permit you to give

1

2 container stuffed full of bills?

3

4 Why didn't Lessner have Sadowski boasting about  
5 the robbery? Wouldn't it all be easy?

6

7 How about cross-examination? As you've seen,  
8 there has been lengthy cross-examination by experienced  
9 trial lawyers in this case. What does cross-examination  
tell you that helps you in your search for the truth as  
to what happened, namely, what happened on July 2nd, 1975?

10

11

12

13

14

Consider to what extent cross-examination helped  
you determine who committed that bankrobbery, and to what  
extent cross-examination instead led you away from the  
facts into collateral matters? Anything to get you  
away from what happened on July 2, 1975.

15

16

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Consider what cross-examination accomplished as to  
each witness. Grafman lied about his profits on the  
night of his arrest and before the grand jury. He lied  
about the getaway car that his family owned. He lied  
to protect accomplices who had not yet been arrested.  
By those lies on the night of his arrest did he increase  
the catch of fish in the FBI net or did he keep the  
catch of fish down?

What about Torres? You remember the series of  
brilliant yes, no questions that Mr. Lombardo engaged in  
with Mr. Torres, suggesting that Torres had told the FBI

### Summation-Brewster

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1

not one, two, three or four, but five stories?

3

Now, let's analyze that. Out of those five stories what inconsistencies did defense counsel bring out between what Torres was telling you in this court-room and what he told the FBI and the United States Attorneys' Office. Torres didn't at first admit that he ever agreed to go along with the bankrobbery. He denied that until a late date. At first he didn't mention Bobby Di Giovanni by name.

33

At one point, I believe it was the second so-called story, he said Grafman dominated the meeting.

12

Now, I invite you to analyze that cross-examination. Do any of those things that were established show that Robert Di Giovanni, Grafman, and Dougherty were not at those meetings?

17

Why didn't Mr. Lombardo, Mr. Le Moles, and Mr. Di Carlo examine those five so-called stories in depth? Ask yourselves this: If anywhere in the statements that Jose Torres made there was a shred of a statement that was favorable or showed the innocence of any of the three defendants in this case, would Mr. DiCarlo or Mr. Le Moles, Mr. Lombardo have let it pass?

25

What clue is there to the failure by defense

counsel to tear into those stories, to bring out all of  
the statements that Jose made? I would ask you to  
consider one admission that was elicited from Torres on  
cross-examination about Grafman dominating the meeting.  
Mr. Lombardo proved too much by that question and by  
that answer. The meetings took place, ladies and gentlemen,  
whoever dominated the meetings.

Now, Mr. LeMole's cross-examination of Michael  
Grafman -- of Jose Torres is particularly interesting.  
You remember how short it was? Now, consider this:  
Doesn't Jose Torres provide the perfect defense for  
someone in Mr. Dougherty's position? Isn't the defense  
Michael Grafman trying to protect somebody who is out on  
the street? Yes. And that person is Jose Torres.  
And he's taking Torres out and putting Dougherty in.

Now, if that is what really happened, why didn't Mr. Le Moles go after Jose Torres hammer and tongs.

Why didn't he tear --

20 MR. LE MOLES: I ask the Court to instruct the  
21 jury that I don't have to prove anything. I have no  
obligation to prove anything.

23 MR. BREWSTER: I have a right to comment on the cross-examination.

THE COURT: The defendant need not do anything.

Summation-Brewster

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1                   2 The defendant need not prove anything or say anything.

3                   4 MR. BREWSTER: Now, consider the question of  
5                   6 whether Grafman is protecting Jose Torres. You remember  
7                   8 that Mr. Di Carlo brought out during the course of his  
8                   9 cross-examination of one of the FBI agents that on  
9                   10 August 20th of this year Grafman told him about the  
10                  11 Puerto Rican participant in the original planning of the  
11                  12 bankrobbery. You remember Agent Johnson telling you  
12                  13 how he located Torres by going down to the projects with  
13                  14 Grafman right behind him in another car.

14                  15 Does that suggest to you that Grafman is trying  
15                  16 to protect Jose Torres to keep him out?

16                  17 What about Sheri Lessner? What cross-examination  
17                  18 was there of her? Was no cross-examination necessary  
18                  19 about the three-quarters of an inch stack of bills with  
19                  20 50's and 100's showing?

20                  21 MR. DI CARLO: That is contrary to the testimony.  
21                  22 It was either one or two 50's or one or two 100's.

22                  23 MR. BREWSTER: And one or two 100's --

23                  24 THE COURT: Don't argue. It's your recollection  
24                  25 that counts. If you find you can't recall, you may have  
the minutes read back. There is no need for this  
jumping up and down.

25                  26 MR. BREWSTER: Is there some doubt as to what wa

1 meant by the word "stack"? Is there any doubt? Did  
2 Lessner mean a roll or a crumpled pile of bills? If  
3 that is the case, wouldn't it have been easier to  
4 clarify that on cross-examination and bring out the  
5 truth if what we are really talking about is not a  
6 three-quarter of an inch stack?

7 Now, how about the contrary situation? The  
8 cases where there was an abundance of cross-examination.  
9 There was Karakitis concerning a car theft. Grafman on  
10 all the other bankrobberies he committed. Markson on  
11 his assorted swindles. I submit to you, ladies and  
12 gentlemen, that the issue is what happened on July 2,  
13 1975, not whether you would like your son or your  
14 brother to marry Sonia, whether you would buy a used  
15 car from David Markson, or how many other robberies  
16 Michael Grafman committed or whether Debby Stuto worked  
17 in a barber shop or a massage parlor.

18 What about the issue of motive? The defense  
19 will undoubtedly submit for your consideration whether  
20 there is a motive to lie on the part of the Government  
21 witnesses.

22 Now, I ask you to analyze that and determine  
23 for yourselves whether it is a difference between a  
24 motive to lie and a motive to tell the truth.

1 Karakitis-cross/Le Moles 935

2 MR. BREWSTER: Could we have a reference to the  
3 document that was handed to the witness?

4 MR. LE MOLES: It is from the 3500 material.  
5 I don't know if it has any indication on the top, Judge.

6 THE WITNESS: Can I see it?

7 MR. LE MOLES: Just read it to yourself.

8 MR. BREWSTER: Could I please have a reference to  
9 the document, Mr. Le Moles?

10 MR. LE MOLES: 3500-1.

11 MR. BREWSTER: Thank you.

12 Any particular page?

13 THE WITNESS: Your Honor, can I have a recess?

14 THE COURT: She wants a short recess. She is  
15 not feeling well.

16 All right, we will take a short recess. Take  
17 the jury out.

18 (The jury thereupon retired from the courtroom  
19 at 3:48 o'clock p.m.)

20 THE COURT: All right, five-minute recess.

21 (Short recess.)

22 (After recess.)

23 (The following occurred in the absence of the  
24 jury.)

25 MR. DI CARLO: I think it is an obligation, as

5

1 Karakitis-cross/Le Moles

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2 Mr. Lombardo says, to alert the Court on one of our  
3 positions on your Honor's allowing the witness to take  
4 the Fifth Amendment. The reason I mention this is the  
5 theory of the Government's case that they have offered  
6 immunity to the witness -- I am sorry, but Mr. Brewster  
7 is not here yet --

8 (Mr. Brewster thereupon entered the courtroom.)

9 MR. DI CARLO: Would you read that back, please?

10 (Record read.)

11 THE COURT: Are you talking about the bankrobbery  
12 or are you talking about the stealing of the automobile?

13 MR. DI CARLO: All bankrobberies.

14 THE COURT: All right, go ahead.

15 MR. DI CARLO: Your Honor, the witness testified  
16 that she has been told by Mr. Brewster that she was  
17 going to testify completely and truthfully as to all the  
18 testimony involving the bankrobberies. Mr. Brewster has  
19 come forward, and I assume it is his theory that he has  
20 given her immunity insofar as she does testify completely  
21 and truthfully.

22 Your Honor, during my examination and the  
23 examination of Mr. Le Moles has allowed the witness to  
24 take the Fifth Amendment. I believe the Government  
25 cannot have it both ways.

6 1

Karakitis-cross/Le Moles

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2 THE COURT: She took it but she really didn't  
3 take it, but go ahead.

4 MR. DI CARLO: I believe the Government cannot  
5 have it both ways. That the witness should not even be  
6 permitted -- that it was the theory of the Government  
7 they offered immunity and that is why she is testifying --

8 THE COURT: You read the immunity statement made.  
9 It was accessory after the fact. The privilege that  
10 was read was given to the witness when it was asked of  
11 her of whether or not she had committed a bankrobbery.  
12 That is not an accessory after the fact. That is not  
13 accessory before the fact. That is involvement  
14 immediately in the incident.

15 And at that point she is entitled to her  
16 privilege.

17 MR. DI CARLO: Your Honor, is it the Government's  
18 contention --

19 THE COURT: It is not the Government's  
20 contention -- I just told you why I gave it to her.  
21 What has the Government got to do with it?

22 MR. DI CARLO: I think we are entitled to know  
23 the full extent of the immunity given to this witness.  
24 Is it the Government's contention --

25 THE COURT: I give the privilege with respect to

1 Karakitis-cross/Le Moles

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2 the incrimination part of the Fifth Amendment to the  
3 witness when it becomes obvious to the Court that she  
4 may involve herself in a crime for which she has not  
5 been immunized. That is the Court's prerogative and not  
6 the Government's prerogative.

7 MR. DI CARLO: And getting to the next point, I  
8 ask the Government is it the Government's position --

9 THE COURT: You can ask him. But I do not want  
10 to be part or parcel of any of your discussions with  
11 the Government which has nothing to do with the Court's  
12 ruling at this time.

13 Now, if you want to find something out from  
14 Mr. Brewster get him outside and ask him. And then if  
15 you disagree and if you have argument on it then you may  
16 argue it.

17 MR. DI CARLO: Your Honor, under Brady I think  
18 we are entitled to know from Mr. Brewster if she is  
19 immunized -- if he intends to immunize this witness of  
20 bankrobbery.

21 MR. BREWSTER: Your Honor, the Government has  
22 no reservation to state on the record. That 3500-32,  
23 the letter agreement is the only agreement with Sonia  
24 Karakitis.

25 THE COURT: As accessory after the fact?

1  
2 MR. BREWSTER: As accessory after the fact and  
misprision of felony.  
3

4 THE COURT: Likewise.  
5

6 MR. BREWSTER: Now, I also pointed out at the  
beginning of the trial day to day that Miss Karakitis  
7 had just informed me that when she went into the bank  
on the 17th of July with Bobby tha. she was aware that  
8 he was casing the bank.  
9

10 MR. DI CAPLO: I am not concerned with testimony  
from the United States Attorney. All I am saying right  
11 here your Honor is I have a right to know whether or  
12 not -- the extent of the Government's immunity. I  
13 think the witness has the right to know. She has  
14 testified under oath that she believes she is immunized  
15 from prosecution for these bankrobberies.  
16

17 MR. BREWSTER: We have offered the witness no  
promises except as stated in the letter, 3500-32.  
18

19 THE COURT: In view of that fact, she is  
entitled to the privilege of the non-incrimination  
20 part of the Constitution. And that is what I had given  
21 her in view of the questions asked. She has an  
22 absolute right to be told in the event she testifies to  
23 a direct relationship involved in a crime that she can  
24 be indicted for it. And that is what I told her. It  
25

1

2 has nothing to do with accessory after the fact for which  
3 they immunized her. That is all.

4

All right.

5

6

(continued next page)

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2 MR. BREWSTER: Candidly, for the record, I  
3 would say had I known that she was aware that Bobby  
4 was casing the bank, I might have written the letter  
differently.

5 MR. DI CARLO: I am sure you were aware of the  
6 testimony of Grafman before the grand jury.

7 MR. BREWSTER: That is correct, yes.

8 MR. DI CARLO: You are relying on her testimony  
9 rather than --

10 MR. BREWSTER: And Grafman's, if you read it  
11 carefully.

12 MR. DI CARLO: All right, my objection is noted.

13 THE COURT: You have your objection noted.  
14 That is the Court's ruling.

15 (The jury thereupon returned to the courtroom  
16 at 4:01 o'clock p.m.)

17 S O N I A K A R A K I T I S, called as a witness, having  
18 been previously duly sworn, resumed the stand and  
19 testified further as follows:

20 THE COURT: All right, you may examine.

21 CROSS-EXAMINATION

22 BY MR. LE MOLES: (Continued)

23 Q Now, Miss Karakitis, is it your testimony that  
24 you went in the vehicle with someone with this gun and brought  
25 the gun to Mr. Dougherty's house? Is that your testimony?

1 gives Mr. Loskocinski a prison term with respect to  
2 this indictment, the Government will in fact join in  
3 Mr. Loskocinski's request that he not be incarcerated  
4 in the same prison facility with any of the defendants  
5 named in 75-CR-603 and 75 CR 632.

6 THE COURT. The Court makes no promises with  
7 respect to those requests made by the United States  
8 Attorney's Office.

9 Do you still wish to plead guilty?

10 THE DEFENDANT LOSKOCINSKI: Yes.

11 THE COURT: The Court accepts the plea as having  
12 a basis in fact.

13 Adjourned without date.

14 MR. BREWSTER: I believe that brings us, Judge,  
15 to the case for trial; U.S. v. Di Giovanni.

16 THE COURT: Yes. The first case to be tried  
17 will be Mr. Di Giovanni.

18 MR. LOMARDO: May I ask for the record what  
19 counts of the indictment the Assistant U.S. Attorney is  
20 going to proceed on in this case as against  
21 Mr. Di Giovanni alone?

22 MR. BREWSTER: At this time, in the first trial  
23 the Government will proceed on count 5 which is the  
24 A count relating to the July 13 robbery and count 7  
25 which is the A count relating to the July 24 robbery.

1                   MR. LOMBARDO: As to that, may I enter an  
2                   objection to trying two separate crimes occurring on  
3                   two separate dates? I think it will be prejudicial to  
4                   the rights of this defendant and prejudice his right to  
5                   an impartial trial.

6                   The jury will be advised that he is accused of  
7                   committing one crime on July 13 and then another crime  
8                   a week later on the 24th; same type of crime with the  
9                   same defendants.

10                  MR. BREWSTER: Your Honor --

11                  THE COURT: Go ahead.

12                  MR. BREWSTER: A substantial amount of time ago.  
13                  on October 20, in response to Mr. Lombardo's discovery  
14                  request I furnished Mr. Lombardo with a copy of the  
15                  indictment.

16                  We discussed the proposal of the Government to  
17                  try the last two robberies together.

18                  I invited Mr. Lombardo's objections and any  
19                  objections of any of the other attorneys and until this  
20                  morning we received no objections.

21                  On the merits of the objection I would say this:  
22                  The method of operation will be shown by the evidence  
23                  to be identical; the same driver, the same two people  
24                  in the bank, the same man going over the counter and  
25                  the same man holding the gun. Two robberies occurring

1 very close to each other in time and carbon copies of  
2 each other in method of operation. I cannot appreciate  
3 the unfairness of any prejudice to the defendant in this  
4 regard.

5 Of course, there is prejudice, there is always  
6 prejudice when evidence of a defendant's crimes are  
7 brought before the Court. But, the question is whether  
8 that prejudice is unfair and I submit in this case it is  
9 not, your Honor.

10 THE COURT: I think the Court will permit the  
11 trial of the two counts 5 and 7. I see no prejudice  
12 either.

13 MR. LOMBARDO: Exception.

14 MR. DI CARLO: When I first made my motion to  
15 sever, since Mr. Sadowski was named in counts 1 and 2  
16 and that was granted, that in counts 1 and 2, the  
17 defendant Sadowski be severed from Robert Di Giovanni  
18 and against the other indictment which was joined  
19 naming the defendant Dougherty, I stated my reasons  
20 and your Honor said it was premature and that I should  
21 renew my motion at the time of trial which motion was  
22 that I think it would be prejudicial to not only my  
23 defendant but also Mr. Di Giovanni since I intend on  
24 cross-examination to extensively question Mr. Grafman  
25 as to other robberies and my client and Mr. Di Giovanni

MR. BREWSTER: Your Honor, I believe I made a  
mistake on the 3500 number. It is 3500-17.

THE COURT: Mark it for identification.

THE CLERK: Document marked for identification as  
Government Exhibit 3500-1.

(So marked.)

THE COURT: Any questions, Mr. Lombardo?

MR. LOMBARDI: None.

THE COURT: All right. Step down.

What names are on that lease, by the way?

MR. BREWSTER: The lease that was found in the apartment, your Honor, relates to a new apartment, not that Karakitis apartment and the names on the lease are Robert Di Giovanni and Sonia D Giovanni.

MR. LOMBARDO: That being the case, your honor, I certainly have no objection to that particular document. I still object to it going into evidence but I withdraw the previous objection. I thought that was the lease to the apartment that was searched.

THE COURT: No, it is not.

I make the ruling that lease is not permissible  
to try this case.

The other matters are admissible to the extent of the weight to be given to them by the jury on the basis

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2 of probative value.

3                         The suppression hearing having been held, both  
4                         agents having testified both as to the warrant and the  
5                         consent to enter the premises for the purpose of making  
6                         the search, I find consent was given by one of the  
7                         occupants of the premises.

8                         The Court finds that the defense motion must be  
9                         denied.

10                        MR. LOMBARDO: I thought Mr. Brewster said there  
11                         would be testimony that Di Giovanni said he was  
12                         unemployed and in checking the statements of the FBI I  
13                         don't see --

14                        MR. BREWSTER: It is not in the 3500 material.

15                        THE COURT: All right.

16                        That will bring us to the trial proper. I guess  
17                         we must wait for the jury and then we will proceed.

18                        MR. BREWSTER: For the record, I would point out  
19                         that in the event Mr. Lombardo wishes to call Sonia  
20                         Karakitis as a witness on this consent issue the  
21                         Government would make her available.

22                        MR. LOMBARDO: Thank you for the offer.

23                        THE COURT: He has no such desire at this time.

24                        We will take a short recess. Get the jury  
25                         together and we will go out to the courtroom in about

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA :  
Appellee,

-v- : Docket No. 76-1097

MICHAEL SADOWSKI, :  
Appellant.

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CERTIFICATE OF SERVICE

STATE OF NEW YORK )  
                      )  
COUNTY OF NEW YORK )

I certify that on July 19th, 1976, I mailed a copy  
of the following to David Trager, Esq., United States Attorney  
for the Eastern District of New York, United States Courthouse,  
225 Cadman Plaza East, Brooklyn, New York: (1) Brief for Appel-  
lant Michael Sadowski; (2) Brief for Appellant Robert DiGiovanni;  
and (3) Joint Appendix for Appellants Michael Sadowski and  
Robert DiGiovanni.

*Donald E. Nawi*  
DONALD E. NAWI, ESQ.  
Attorney for Appellant  
Michael Sadowski